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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET, INC., a Delaware corporation,

Defendant.

**PLAINTIFF BLENDTEC INC.'S
MOTION TO QUASH SUBPOENAS
TO OUTSIDE COUNSEL**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Pursuant to FRCP 26, 34, and 45(d)(3), Blendtec moves to quash subpoenas served upon its current and former outside counsel, Dorsey & Whitney and Holland & Hart (**Exhibit A**).¹ Blendtec objected to the subpoenas on December 7, 2022 (**Exhibit B**). Blendtec attempted to meet and confer with Blendjet, but Blendjet refused to do so until after the deadline to respond to the

¹ Blendtec filed this on December 9, but, at opposing counsel's request, is re-filing using the short-form procedure.

subpoenas (**Exhibit C**).

Blendtec has standing to move to quash the subpoenas because they request documents covered by the attorney-client privilege held by Blendtec. *See* Monson Declaration (**Exhibit D**) at ¶¶3, 5. “[A] party has standing when the documents subject to a Rule 45 subpoena are protected by the work-product doctrine or attorney client privilege.” *Francis v. Apex USA*, 2020 WL 13094070 at *4 (W.D. Ok. 2020). *See also Anderson v. Heartland Coca-Cola*, 2022 WL 444092 at *3 (D. Kan. 2022) (“where the party seeking to challenge the subpoena has a personal right or privilege with respect to the subject matter requested in the subpoena” party may move to quash subpoena). Nearly every document requested in the identical subpoenas to D&W and H&H is privileged.² Exhibit A (Request Nos. 1-2, 6-13, 15-19). These Requests seek communications between Blendtec’s attorneys and Blendtec regarding legal advice between counsel and client. *See* Monson Decl. On November 17, 2022, Blendtec produced a privilege log to Blendjet that includes privileged communications between Blendtec and D&W and H&H that are requested by the subpoena. *See Exhibit E*. As such, the subpoena should be quashed. *See* FRCP 45(d)(3)(A) (court “must quash or modify a subpoena that . . . requires disclosure of privileged or other protected matter”).

The only potentially non-privileged documents at issue are search reports and limited correspondence between D&W and the USPTO. Any such documents are in the possession of Blendtec. With respect to these documents, party discovery is ongoing and Blendjet can request

² Blendjet issued two entirely duplicative subpoenas to D&W and H&H. *See* Attachment A to H&H Subpoena (footer reads “Attachment A to Subpoena to Dorsey & Whitney LLP”). Also, Request Nos. 7, 10, and 19 refer to D&W, when it appears that they should refer to H&H.

those documents under Rule 34. Indeed, as Blendjet knows, Blendtec already produced the search report responsive to Requests 3-4 (1999 search report produced at Blendtec2418). Blendjet has made no showing that third party subpoenas are necessary at this point. For these reasons, the outside counsel subpoenas are improper and should be quashed.

Blendtec seeks FRCP 37(a)(5)(A)(ii) attorneys' fees.

DATED this 14th day of December, 2022.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2022, a true and correct copy of the foregoing document was served on counsel of record via the Court's CM/ECF system:

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